

ATTENTION ATTENTION ATTENTION

small entity

Method of Refund:

- ACH/EFT
- Credit Card
- Deposit Account # 23-2415
- Treasury Check

Patent/TM/App/Serial # 08/637,762

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PATENT · · · · · PATENT
Attorney Docket No. 31304-705.831

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) US PATENT & TRADEMARK
Andrea Kern et al.) OFFICE
Application No.: 08/637,752) Group Art Unit: 1648
Filed: July 20, 2001)
For: Adeno-Associated Virus-Its Diagnostic Use)
with Early Abortion) Examiner: Mary Mosher

REQUEST FOR REFUND UNDER 37 CFR 1.26(b)

M/S AF
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 20231-1450

Dear Sir:

Applicants request a refund of \$700.00 for the Issue Fee paid on April 15, 2005 (Exhibit A) because the entity status was incorrectly calculated by the USPTO to be large entity, and we mistakenly paid that amount. The following remarks are submitted in support of this request.

Remarks

Applicants received a Notice of Allowance in U.S. Serial No. 08/637,752 dated February 15, 2005, and in response paid the Issue Fee due in the amount of \$1,400.00 on April 25, 2005. This payment was received and processed by the USPTO and the fees were charged to Deposit Account No. 23-2415 (see Exhibit B for Deposit Account Statement for April 2005). Following payment, it was realized that Applicants are a small entity and the amount that should have been paid was \$700.00.

Applicants do not believe this request for a refund falls under CFR 1.28(a) that states:

A refund pursuant to § 1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee.

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Appl. No. 08/637,852
Request for Refund dated July 25, 2005

PATENT
OFFICE

The USPTO had prior knowledge that small entity status was requested for this application and did not correct their records. It is believed this refund request falls under CFR 1.26(b) which gives Applicants two years to request a refund.

Summary

To summarize, the application was filed by Pennie & Edmonds on April 19, 1996 along with a blank Verified Statement Claiming Small Entity Status, as was the practice at the time, which indicated Applicants' intention for the application to claim small entity status. A search of our records indicates that a signed Small Entity Statement was not filed with the Patent Office; however effective September 8, 2000 the USPTO changed the reporting rule and it was no longer necessary to file a form requesting small entity status, instead an applicant could "assert a claim of small entity status under CFR 1.27."

On July 20, 2001 a Response to Missing Parts was filed by Applicants along with an extension of time that specifically asserted "Applicants hereby claims small entity status (37 CFR 1.27)" (attached as Exhibit C). Following this assertion, small entity fees were paid for a number of years for filings related to this application.

Then because the USPTO had not corrected its records with regard to the application's small entity status, the USPTO mistakenly generated a Notice of Allowance for the wrong amount.

Conclusion

In view of the submission of the above argument and attached Exhibits, Applicants respectfully submit they are entitled to a refund of one-half the \$1,400.00 Issue Fee or \$700.00 for over payment.

The Commissioner is hereby authorized to credit any overpayment to Deposit Account No. 23-2415 (Docket No. 31304-705.831).

Respectfully submitted,

Date: July 25, 2005 By:

Albert P. Hallin
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